

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	Case No. 3:18-cr-186
	:	also Case No. 3:23-cv-347
v.	:	
	:	Judge Thomas M. Rose
BRIAN HIGGINS,	:	
	:	Magistrate Judge Michael R. Merz
Defendant.	:	
	:	

**ENTRY AND ORDER ADOPTING REPORT AND RECOMMENDATIONS
(DOC. NO. 172)**

Pending before the Court is Defendant's Amended Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, Correct Sentence by a Person in Federal Custody (the "Motion") (Doc. No. 171). Magistrate Judge Michael R. Merz has issued his Report and Recommendations (Doc. No. 172), recommending that the Court deny Defendant's Motion and dismiss the current action without prejudice to refiling a motion to vacate that complies with Rule 2 of the Rules Governing § 2255 Proceedings. (Doc. No. 172 at PageID 2914.) Magistrate Judge Merz further recommends that, because reasonable jurists would not disagree with this conclusion, Defendant be denied a certificate of appealability and not be permitted to proceed *in forma pauperis*. (*Id.*)

As required by 28 U.S.C. § 636(b) and Federal Rule of Civil Procedure 72(b), the Court has made a *de novo* review of the record in this case. Upon said review, the Court **ADOPTS** the Report and Recommendations, without objection. (Doc. No. 172). Wherefore, the Court **DENIES** the Motion, (Doc. 171), **WITHOUT PREJUDICE**. Because reasonable jurists would not disagree with this conclusion, Defendant is denied a certificate of appealability and the Court certifies to

the Sixth Circuit that any appeal would be objectively frivolous and therefore Defendant should not be permitted to proceed *in forma pauperis*. The instant case remains closed.

DONE and **ORDERED** in Dayton, Ohio, this Tuesday, March 12, 2024.

s/Thomas M. Rose

THOMAS M. ROSE
UNITED STATES DISTRICT JUDGE